

1-1-2004

## A Hometown Dilemma: Addressing the Sexual Harassment of Undocumented Women in Meatpacking Plants in Iowa and Nebraska

Amanda Clark

Follow this and additional works at: <https://repository.uchastings.edu/hwlj>



Part of the [Law and Gender Commons](#)

---

### Recommended Citation

Amanda Clark, *A Hometown Dilemma: Addressing the Sexual Harassment of Undocumented Women in Meatpacking Plants in Iowa and Nebraska*, 16 *Hastings Women's L.J.* 139 (2005).

Available at: <https://repository.uchastings.edu/hwlj/vol16/iss1/5>

This Note is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in *Hastings Women's Law Journal* by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact [wangangela@uchastings.edu](mailto:wangangela@uchastings.edu).

# A Hometown Dilemma: Addressing the Sexual Harassment of Undocumented Women in Meatpacking Plants in Iowa and Nebraska

Amanda Clark\*

## I. INTRODUCTION

While much has been written about sex discrimination and sexual harassment in agricultural labor,<sup>1</sup> significantly fewer efforts have been made to examine the ongoing problem of sexual harassment in the meatpacking industry. Although a few female employees have successfully brought charges against packing plants in the past few years, winning jury awards or forcing the plants to settle,<sup>2</sup> sexual harassment in the meatpacking industry remains a systemic problem.

The problem of sexual harassment of undocumented workers is difficult to analyze outside the context of the growing participation of Latino workers in the meatpacking industry and the rapidly increasing presence of Latino immigrants within the communities that host meatpacking plants. In addition to focusing on the barriers to reporting and resolving sexual harassment complaints in the industry, this note will engage in a brief survey of the migration trends towards meatpacking communities that have developed over the past decade. This note will also examine the growing controversy over the impact and meaning of the

---

\* J.D. Candidate, May 2005, University of California, Hastings College of the Law. The author is originally from Iowa where she obtained her B.A. in Global Studies and Spanish at the University of Iowa. She spent three years on the Texas/Mexico border where she worked as a legal assistant at Texas Rural Legal Aid. She is currently studying international human rights law at the University of London, School of Oriental and African Studies, with a focus on the human rights of women within the developing world.

1. See, e.g., Maria M. Dominguez, *Sex Discrimination & Sexual Harassment in Agricultural Labor*, 6 AM. U.J. GENDER & L. 231 (1997); Richard Kamm, *Extending the Progress of the Feminist Movement to Encompass the Rights of Migrant Farmworker Women*, 75 CHI.-KENT L. REV. 765 (2000); Maria L. Ontiveros, *Lessons from the Fields: Female Farmworkers and the Law*, 55 ME. L. REV. 157 (2003); William R. Tamayo, *The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 U.C. DAVIS L. REV. 1075 (2000).

2. See ERIC SCHLOSSER, *FAST FOOD NATION*, 176 (Perennial 2002) (2001); see also Lynn Hicks, *IBP Worker Awarded \$2.4 Million by Jury*, DES MOINES REGISTER, Feb. 27, 1999, at 1A; *Monfort Beef to Pay \$900,000 to Settle Sexual Harassment Suit*, HOUSTON CHRONICLE, Sept. 1, 1999, at 2.

Supreme Court's holding in *Hoffman Plastic Compounds, Inc. v. NLRB*, the potential application of that holding to Title VII discrimination claims, and the likely effect the holding will have on the willingness of undocumented workers to come forward with claims of rights violations by employers. Next, this note will examine current outreach strategies in Iowa and Nebraska as a snapshot of activities in two major meatpacking states. Finally, the note will address the possibility of extending to the Midwest successful programs created by and for the farm worker community in California.

## II. STATUTORY RESPONSES TO DEMOGRAPHIC TRENDS IN THE MIDWEST

As the meatpacking industry<sup>3</sup> continues to target immigrant communities in different states and workers outside of the United States, in its recruitment efforts,<sup>4</sup> the migrant stream is shifting to the Midwestern states as workers increasingly join the meatpacking and service industries.<sup>5</sup> Between 1990 and 2000, the Latino population of Iowa grew from 32,647 to 82,473, an increase of 152%. In the same period, Nebraska's Latino population grew from 36,969 to 94,425, an increase of 155%.<sup>6</sup> As a result of the increasingly diverse and vulnerable workforce, Midwestern states and their residents had to adapt to the changing face of their communities.

Some Midwestern residents fear the growing trend of Latino immigration will endanger their communities' traditional character. As Sylvia Lazos Vargas points out in her analysis of the trend in migration towards rural areas, "the influx of Latinos/as is felt immediately and visibly . . . the sense of who is a newcomer spans generations, not years.

---

3. As of 2002, the largest packing plants in the nation were Tyson Foods (which merged with IBP in 2001), ConAgra Foods, Cargill/Excel, and Smithfield Foods. See Research, Education, Advocacy, People ("REAP"), at <http://www.reapinc.org/Top%20Fifty%20Meat%20Cos.html> (last visited July 27, 2004). In early 2001, Tyson Foods purchased IBP for \$4.7 million. See *Tyson Foods Victorious in IBP Bidding War: Now Nation's No. 1 Beef, Poultry Processor*, AGRIBUSINESS EXAMINER, Jan. 11, 2001, No. 101, at <http://www.electrictarrow.com/CARP/agbiz/101.htm>.

4. PRAIRIEFIRE RURAL ACTION, SHATTERED PROMISES: THE PLIGHT OF NON-ENGLISH SPEAKING WORKERS IN IOWA'S MEATPACKING INDUSTRY 5 (1991). "IBP and Monfort [packing plants] have recruited workers from Mexico, California, Texas, Michigan, northern Minnesota and Chicago. . . . A significant percentage are non-English speaking and often are not literate in their own native language. . . . [T]he workers targeted in these recruiting efforts are often unemployed agricultural day laborers desperate for work of any kind." *Id.*; see also NANCY NAPLES, ECONOMIC RESTRUCTURING AND RACIALIZATION IN THE MIDWEST: THE CASE OF MEXICAN AND MEXICAN-AMERICAN MIGRANTS IN RURAL IOWA (1996), available at [http://migration.ucdavis.edu/cf/more.php?id=155\\_0\\_2\\_0](http://migration.ucdavis.edu/cf/more.php?id=155_0_2_0) (last visited July 27, 2004).

5. See Telephone Interview with Holly Burns, Executive Director, Lincoln Hispanic Community Center (Feb. 20, 2004) (transcript on file with Hastings Women's Law Journal).

6. See United States Census 2000, at [www.census.gov/main/www/cen2000.html](http://www.census.gov/main/www/cen2000.html) (last visited July 27, 2004).

On the other hand, these are communities where norms of community and neighborliness could help ease transitions, and here positive community leadership is easier to exercise by a handful of well-motivated individuals."<sup>7</sup> The new migration trend has not been entirely unwelcome. In 2003, for example, Iowa awarded grants of \$50,000 to three counties to attract immigrants with the goal of stimulating economic development.<sup>8</sup>

Midwestern states have taken steps to address the plight of the growing immigrant workforce by enacting non-English speaking workers' rights legislation. Iowa passed the Non-English Speaking Workers Protection Act on July 1, 1990.<sup>9</sup> The new law requires companies with over 100 employees that have a workforce of at least ten percent non-English speakers who speak the same non-English language to provide an interpreter *and* a person who serves as a referral to community services.<sup>10</sup> Iowa's enforcement of this law as of 1991 was doubtful, given severe budget cuts that essentially limited the Iowa Division of Labor of the Department of Employment Services to enforcing the law when, and if, complaints were filed.<sup>11</sup> In 2001, Iowa legislators introduced a bill establishing a meatpacking industry workers' bill of rights.<sup>12</sup> The current status of this legislation is unclear, although Rural Advocacy, a coalition of religious, environmental, civic and social justice groups in Iowa, continues to advocate for its adoption.<sup>13</sup>

Nebraska then followed suit with its own version of the workers' rights legislation. Their statute refers to the Governor's Nebraska Meatpacking Industry Workers' Bill of Rights, which lists a variety of workers' rights including the right to organize, to have a safe workplace, to complete

---

7. Sylvia R. Lazos Vargas, "*Latino/a-ization*" of the Midwest: *Cambio de Colores* (*Change of Colors*) as *Agromaquilas* Expand into the Heartland, 13 BERKELEY LA RAZA L.J. 343, 345 (2002) (discussing the impact of immigrant communities of color on Midwestern communities and exploring legal and social issues Latino communities are facing as a result of shifts in immigration patterns and post-9/11 treatment of immigrants).

8. CONSTANCE NEWMAN, U.S. DEP'T OF AGRIC. ECON. RESEARCH SERV., IMPACTS OF HISPANIC POPULATION GROWTH ON RURAL WAGES (2002), *available at* [http://migration.ucdavis.edu/cf/comments.php?id=4\\_0\\_2\\_0](http://migration.ucdavis.edu/cf/comments.php?id=4_0_2_0) (last visited July 24, 2004).

9. IOWA CODE §§ 91E.1-E.2 (2003).

10. *Id.*

11. PRAIRIEFIRE RURAL ACTION, *supra* note 4, at 4.

12. H.F. 633, 79th Leg., Reg. Sess. (Ia. 2001), *available at* <http://www.legis.state.ia.us/GA/79GA/Legislation/HF/00600/HF00633/Current.html> (providing that Iowa meatpacking workers shall have the right to organize, to have a safe workplace, to have complete information regarding federal and state rights and benefits, to understand that information and take advantage of the rights and benefits, and to be free from discrimination; § 84A.12 provides for the creation of a meatpacking industry workers' rights coordinator to monitor the meatpacking industry and ensure compliance with the meatpacking industry workers' bill of rights).

13. RURAL ADVOCACY 2003, RURAL ADVOCACY 2003 SUPPORTS RIGHTS OF WORKERS IN AGRICULTURAL INDUSTRIES, *at* <http://www.ncrlc.com/03rights-of-ag-workers.html> (last visited July 27, 2004).

information, and to be free from discrimination.<sup>14</sup> The statute establishes the position of a Meatpacking Industry Workers' Rights Coordinator, who is appointed by the Governor.<sup>15</sup> The Nebraska law also expressly requires employers who actively recruit non-English speaking workers to provide a bilingual employee during the shifts worked by non-English speaking employees.<sup>16</sup> This bilingual individual is employed (1) to explain and respond to questions regarding the terms, conditions, and responsibilities of employment, and (2) to serve as a referral agent to community services for the non-English speaking employees.<sup>17</sup> In the experience of one union organizer, Donna McDonald, President of the United Commercial and Food Workers Union, unorganized plants consistently fail to provide a referral person.<sup>18</sup> However, once the plants are unionized, the owners generally comply with the statutory requirements.<sup>19</sup>

Prior to passing immigrant workers' rights legislation, Nebraska created the Mexican-American Commission in 1972.<sup>20</sup> The Commission cooperates with other agencies to serve the needs of Mexican-Americans, evaluates existing programs and legislation concerning Mexican-Americans, and conducts public education and community leadership programs related to Mexican-American issues.<sup>21</sup> The Nebraska Commission's Iowa counterpart is the Iowa Commission of Latino Affairs, established in 1974 and named in 1990 under the Department of Human Rights.<sup>22</sup> The Iowa Commission has a mandate similar to the Nebraska mandate and is comprised of nine regional representatives appointed by the state Senate to advocate for Latinos in Iowa.<sup>23</sup>

### III. PLANT CONDITIONS AND THE PROBLEM OF SEXUAL HARASSMENT

The working conditions in meatpacking plants are notoriously dangerous. Donna McDonald noted that workers are laboring with knives

14. NEB. REV. STAT. § 48-2213(2)(a)-(j) (2003).

15. *See id.* § 48-2213(1).

16. *See id.* § 48-2209.

17. *Id.*

18. Telephone Interview with Donna McDonald, President, United Commercial and Food Workers Union Local 271 (Jan. 30, 2004) (discussing organization of Nebraska's packing plants, plant conditions, and sexual harassment claims) (transcript on file with Hastings Women's Law Journal).

19. *Id.*

20. NEBRASKA MEXICAN-AMERICAN COMMISSION, *at* [http://www.mex-amer.state.ne.us/index\\_html?page=content/statutes.html](http://www.mex-amer.state.ne.us/index_html?page=content/statutes.html) (last visited July 27, 2004); NEB. REV. STAT. § 81-8,262 (2003).

21. NEB. REV. STAT. § 81-8,265.

22. IOWA DEPARTMENT OF HUMAN RIGHTS, IOWA DIVISION OF LATINO AFFAIRS (2004), *available at* [http://www.state.ia.us/government/dhr/la/Resources\(new\)/LABrochure12%2004.pdf](http://www.state.ia.us/government/dhr/la/Resources(new)/LABrochure12%2004.pdf) (last visited July 27, 2004); *see also* IOWA CODE § 216A.15 (2003) (enumerating the commission's duties).

23. IOWA DEPARTMENT OF HUMAN RIGHTS, *supra* note 22.

"elbow to elbow," so close together that one slip of the knife could mean serious injury or death.<sup>24</sup> In one incident, an 18-year-old Guatemalan worker nearly bled to death when a co-worker accidentally pierced his chest cavity with a knife, causing internal bleeding.<sup>25</sup> The young man suffered excessive blood loss and went into a coma, before the plant management learned about the injury.<sup>26</sup>

Eric Schlosser, author of *Fast Food Nation*, related his experience touring a packing plant on the High Plains: "[w]orkers on the line wear about eight pounds of chain mail beneath their white coats, shiny steel armor that covers their hands, wrists, stomach, and back . . . . But knives somehow manage to get past it."<sup>27</sup> The temperatures are kept low, and the employees work frantically not to fall behind.<sup>28</sup> Line speeds<sup>29</sup> do not slow down when workers are absent, requiring employees to speed up their pace despite the close conditions and dangerous instruments they are required to use.<sup>30</sup> Roughly 40,000 meatpacking workers suffer serious work-related injuries every year.<sup>31</sup> In 2000, the meatpacking industry had the highest incidence rate of nonfatal injury and illness.<sup>32</sup> The Iowa Division of Labor estimated in 1991 that injury and health problems in Iowa packing plants impacted over forty-three percent of the state's meatpacking industry workforce every year.<sup>33</sup> These dangerous conditions are compounded by the reality that the workforce in many plants is largely comprised of non-English-speaking immigrants who are more prone to injuries because of the language barriers.<sup>34</sup>

The phenomenon of sexual harassment and intimidation exacerbates the dangerous conditions in packing plants. When workers engage in tasks that require high-speed handling of knives and hooks, anxiety and nervousness caused by proximity to harassing supervisors or co-workers

---

24. Interview with Donna McDonald, *supra* note 18.

25. *Id.*

26. *Id.*

27. SCHLOSSER, *supra* note 2, at 169.

28. *Id.* at 169-70.

29. Workers do a variety of jobs throughout the beef slaughtering and packaging process, including seizing sides of beef with hooks and knives and carving out meat cuts, taking meat from moving conveyor belts and slicing away fat with long knives, and carving meat with electric knives with spinning blades. *See id.* at 170. In addition, plants may wish to conceal how fast their line speeds operate. Holly Burns, Executive Director of the Lincoln Hispanic Community Center in Nebraska, suspected that a plant official's request to remove her watch during a plant tour in order to avoid meat contamination was actually meant to prevent her from timing the line speed. Interview with Holly Burns, *supra* note 5.

30. SCHLOSSER, *supra* note 2, at 170.

31. *Id.* at 172.

32. *See* BUREAU OF LABOR STATISTICS, INDUSTRY INJURY AND ILLNESS DATA (2001), at <http://www.bls.gov/iif/oshwc/osh/os/ostbl129.pdf> (last visited July 27, 2004).

33. PRAIRIEFIRE RURAL ACTION, *supra* note 4, at 1.

34. *Id.*

can increase the likelihood of injury and danger to other workers.<sup>35</sup> Although workers wear protective gear, this does not always prevent serious injuries.<sup>36</sup> A worker who is shaking because a supervisor who has sexually harassed or intimidated her is standing nearby may miss a cut, particularly where employees are expected to make up for absent workers by increasing their own work speed.<sup>37</sup> Unlike workers in other industries, a meatpacking line worker cannot simply avoid or move away from a supervisor who sexually harasses her, and in many cases must share a lunchroom and a locker room with the perpetrator.<sup>38</sup>

The ability and willingness of meatpacking states like Iowa and Nebraska to enforce their worker safety provisions will become increasingly important if the immigration trends of the 1990s continue. Lincoln Hispanic Community Center Executive Director Holly Burns noted that in 2000, Nebraska ranked sixth among all states in Latino population growth.<sup>39</sup> As the number of Latinos entering meatpacking communities increases, the role of unions in forcing plant owners to comply with state and federal safety and anti-discrimination laws will also become increasingly important.

It is difficult to determine how many of these immigrant workers are undocumented. Although one 1997 case study focusing on an IBP plant in Lexington, Nebraska estimated that twenty percent of workers in that plant were undocumented,<sup>40</sup> that number may be too conservative. The undocumented workforce is difficult to track because the number of undocumented workers varies from plant to plant.<sup>41</sup> In fact, the United Food and Commercial Workers Union<sup>42</sup> declines to ask potential members about their legal status. This ultimately rules out a potential source of reliable information about actual numbers of undocumented workers in the meatpacking industry.<sup>43</sup>

#### A. THE *HOFFMAN* HOLDING

The problem of sexual harassment against undocumented women in the meatpacking industry is set against a larger context of employer discrimination against undocumented workers. A recent Supreme Court holding in *Hoffman Plastic Compounds v. NLRB* has made it more difficult

---

35. Interview with Holly Burns, *supra* note 5.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. LOURDES GOUVEIA & DONALD D. STULL, JULIAN SAMORA RESEARCH INSTITUTE, MICHIGAN STATE UNIVERSITY, LATINO IMMIGRANTS, MEATPACKING, AND RURAL COMMUNITIES: A CASE STUDY OF LEXINGTON, NEBRASKA 9 (1997).

41. Interview with Donna McDonald, *supra* note 18.

42. In 2001, the UFCW was the fourth largest union in the AFL-CIO. See REAP, *supra* note 3.

43. Interview with Donna McDonald, *supra* note 18.

for immigrant workers to enforce their workplace rights. In *Hoffman*, the Court held that the National Labor Relations Board (“NLRB”), the entity which adjudicates labor claims, cannot require employers to award backpay to undocumented workers because it undermines federal immigration policy under the Immigration Reform and Control Act of 1986 (“IRCA”).<sup>44</sup>

This holding in *Hoffman* represents a departure from previous case law. The Court had held in *Sure-Tan, Inc. v. NLRB* that requiring an employer to pay a minimum backpay award to undocumented workers would advance the policies of the National Labor Relations Act (“NLRA”).<sup>45</sup> In *Hoffman*, the Court chose instead to apply its reasoning from *Southern Steamship Co. v. NLRB*, in which the NLRB’s decision to award backpay to striking sailors was overturned.<sup>46</sup> In that case, the Court reasoned that although the NLRB’s discretion was broad, the Board could not implement the remedies set forth in the NLRA “so single-mindedly that it may wholly ignore other and equally important Congressional objectives.”<sup>47</sup>

The effect of the *Hoffman* ruling on undocumented workers is, arguably, three-fold. First, it encourages retaliation by unscrupulous employers against undocumented workers who claim violations of their workplace rights. Second, it provides incentives for the employer to claim that workers are not entitled to certain remedies, which has the effect of chilling workers’ enforcement of their rights. Third, the holding undermines the enforcement of immigration law by encouraging employers to hire and take advantage of undocumented workers.<sup>48</sup> As Justice Breyer stated in his dissent, “to deny the Board the power to award backpay . . . lowers the cost to the employer of an initial labor law violation . . . thereby increas[ing] the employer’s incentive to find and to hire illegal-alien employees.”<sup>49</sup>

In response to the Court’s holding in *Hoffman*, the NLRB issued a memorandum explaining available procedures and remedies for

44. 535 U.S. 137, 140 (2002). The Court cites the language of 8 U.S.C. § 1324a(a)(1)(A) of the Act, which provides: “It is unlawful for a person or other entity to hire . . . an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)).” 8 U.S.C. § 1324a(a)(1)(A) (2004). Subsection (h)(3) defines an “unauthorized alien” as one who is at the time of employment neither lawfully admitted for permanent residence, nor authorized to be employed by the Act or the Attorney General. *Id.* § 1324a(h)(3).

45. 467 U.S. 883, 890 (1984).

46. 316 U.S. 31, 48 (1942).

47. *Id.* at 47 (explaining that the NLRB’s discretion did not allow it to override federal mutiny laws).

48. NATIONAL EMPLOYMENT LAW PROJECT, USED AND ABUSED: THE TREATMENT OF UNDOCUMENTED VICTIMS OF LABOR LAW VIOLATION SINCE HOFFMAN PLASTIC COMPOUNDS v. NLRB 1 (2003), available at [http://www.maldef.org/publications/pdf/Hoffman\\_11403.pdf](http://www.maldef.org/publications/pdf/Hoffman_11403.pdf) (last visited July 12, 2004).

49. *Hoffman*, 535 U.S. at 155 (Breyer, J., dissenting) (explaining that the Court’s ruling removes the deterrence effect that a backpay award provides, thereby imposing only future obligations upon law-violating employees).



undocumented workers.<sup>50</sup> The memorandum noted that, although reinstatement was still an available remedy for undocumented workers, employers would no longer be required to award backpay. The Board also emphasized that undocumented workers retain some enforceable workplace rights and are not precluded from obtaining compensation for work performed under unlawfully imposed terms and conditions.<sup>51</sup>

What is the effect of this ruling on workers in the meatpacking industry? Many meatpacking plants are located in rural areas with little or no union presence, allowing plant owners to control undocumented employees with the threat of deportation.<sup>52</sup> Moreover, since the *Hoffman* holding, undocumented workers are increasingly reluctant to come forward with sexual harassment and sexual abuse claims.<sup>53</sup> Employers' tendency to interpret the *Hoffman* ruling broadly to allow them to request work authorization and immigration documentation in response to sexual harassment claims leaves many employees feeling that they have no effective legal avenue to pursue sexual harassment claims.<sup>54</sup>

#### B. THE APPLICABILITY OF *HOFFMAN* TO TITLE VII DISCRIMINATION CLAIMS

Although workers in many cases benefit from the protections and advocacy provided by labor unions, employers continue to exploit the vulnerability of undocumented workers by threatening termination, or worse — threatening to report the uncooperative worker to the immigration service.

In *EEOC v. Tortilleria "La Mejor,"* plaintiff Alicia Castrejon filed a sex discrimination claim against her employer. The employer subsequently argued that she was not an "individual" within the meaning of Title VII Section 703(a)(1)<sup>55</sup> because she was undocumented.<sup>56</sup> The district court

---

50. Christine Dana Smith, *Give Us Your Tired, Your Poor: Hoffman and the Future of Immigrants' Workplace Rights*, 72 U. CIN. L. REV. 363, 370 (2003).

51. *Id.* at 371 (citing Arthur F. Rosenfeld, *Procedures and Remedies for Discriminatees Who May Be Undocumented Aliens After Hoffman Plastic Compounds, Inc.*, LRX Lab. Rel. Rep. (BNA) No. 828, at 4319 (July 19 2002)).

52. *Id.* at 373 (citing David Barboza, *Meatpackers' Profits Hinge on Pool of Immigrant Labor*, N.Y. TIMES, Dec. 21, 2001, at A26).

53. Interview with Holly Burns, *supra* note 5. Ms. Burns related a report of an undocumented woman who was assigned to work a particular shift. *Id.* After her direct supervisor was put on a different shift, this worker was transferred to that shift with no explanation. *Id.* The worker had felt intimidated by the supervisor and did not like working with him. *Id.* She was moved from knife-sharpening duty to cleanup crew, which required her to go out back to the garbage unit. *Id.* She felt unsafe going alone to the garbage area and mentioned her feelings to her supervisor, who volunteered to accompany her. *Id.* After two weeks he raped her behind the garbage hopper. *Id.* The worker reported that she felt she could not turn him in because of her immigration status. *Id.*

54. Smith, *supra* note 50, at 374 (citing Nancy Cleland, *Employers Test Ruling on Immigrants*, L.A. TIMES, Apr. 22, 2002, at C1).

55. 42 U.S.C. § 2000e-2(a)(1) (2004) provides: "It shall be an unlawful employment practice for an employer . . . to discharge any individual, or otherwise to discriminate

noted that the court must look first to the plain meaning of the statute to determine whether Congress intended to include or exclude undocumented workers from the scope of Title VII.<sup>57</sup> "If the plain meaning of Title VII is unambiguous, the court may look to the interpretation given to it by the [Equal Employment Opportunity Commission ("EEOC")]."<sup>58</sup> Although the EEOC's interpretation is not controlling, it is entitled to great deference. Here the court notes that the EEOC had never construed Title VII to exclude undocumented workers.<sup>59</sup>

Additionally, the court considered the congressional intent behind the promulgation of immigration policy to find grounds for its interpretation of Title VII: the House Judiciary Report on the Immigration Reform and Control Act of 1986 specifically stated that the Act was not intended to "undermine or diminish in any way labor protections in existing law."<sup>60</sup> The court reasoned that maintaining Title VII protections for undocumented workers is consistent with IRCA objectives, because it would reduce the employer's incentive to hire such workers.<sup>61</sup>

Although IRCA and NLRA have both been interpreted to uphold national immigration policy by discouraging employers from hiring undocumented workers, *Hoffman* would seem to contradict the very policy its holding purported to support. By removing employer liability for backpay awards to undocumented workers, employers have a strong incentive to subvert immigration policy and to take full advantage of the chilling effect of the *Hoffman* ruling on workplace rights by seeking out and hiring such workers.<sup>62</sup> Employers have attempted to extend the scope of *Hoffman* to a variety of legal claims, even going so far as to state that undocumented workers have no employment rights at all.<sup>63</sup> However, the courts, the NLRB, the EEOC and the Department of Labor have all attempted to clarify the scope of *Hoffman*, by distinguishing the facts of *Hoffman* and arguing for limiting its application to its facts.<sup>64</sup>

---

against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin."

56. 758 F. Supp. 585, 587 (E.D. Cal. 1991).

57. *Id.* at 589.

58. *Id.*

59. *Id.*

60. *Id.* at 593.

61. *Id.* at 592.

62. Smith, *supra* note 50, at 384.

63. Elizabeth R. Baldwin, *Damage Control: Staking Claim to Employment Law Remedies for Undocumented Immigrant Workers After Hoffman Plastic Compounds, Inc. v. NLRB*, 27 SEATTLE U. L. REV. 233, 250 (2003).

64. *Id.* at 252. See also Austin T. Fragomen, Jr. & Steven C. Bell, *NLRB Discusses Impact of Hoffman Plastic on Procedures and Remedies for Undocumented Workers*, IMMIGR. BUS. NEWS & COMMENT, Nov. 1, 2002, available at 2002 WL 31398685; WAGE & HOUR DIV., U.S. DEP'T OF LABOR, FACT SHEET NO. 48, APPLICATION OF U.S. LABOR LAWS TO IMMIGRANT WORKERS: EFFECT OF HOFFMAN PLASTICS DECISION ON LAWS ENFORCED BY THE WAGE AND HOUR DIVISION (2002), available at <http://www.dol.gov/esa/regs>

### C. RECENT DEVELOPMENTS

In the post-*Hoffman* decision of *De La Rosa v. N. Harvest Furniture*, a federal district court in Illinois considered an action involving Title VII claims.<sup>65</sup> In that case, the employer petitioned the court to require the employee to provide documentation demonstrating work authorization at the time of the violation.<sup>66</sup> The plaintiff argued that the court should deny the request based on four grounds: (1) the *Hoffman* reasoning does not apply to Title VII cases; (2) *Hoffman* does not apply where the employer is at fault for failing to verify the employee's immigration status; (3) even if *Hoffman* applies, the chilling effect of requiring the plaintiffs to provide evidence of their immigration status outweighs the relevance of that information; and (4) even supposing immigration status is relevant to a backpay award, the time periods for which the employer requested the information are not relevant to post-discharge backpay.<sup>67</sup> The court refused to uphold the employer's request, finding that the *Hoffman* holding was not dispositive as to Title VII claims.<sup>68</sup> This district court holding appears to limit the scope of *Hoffman* to claims that do not originate under Title VII. Whether the courts will continue to resist applying a broad application of *Hoffman* remains to be seen.

## IV. ADDRESSING SEXUAL HARASSMENT OF UNDOCUMENTED WOMEN IN PACKING PLANTS

### A. BARRIERS TO PROTECTING UNDOCUMENTED WORKERS

Given the current applicability of Title VII to undocumented workers — and the apparent restraint of courts in applying *Hoffman*'s limitations to Title VII claims — why do meatpacking plants remain a fertile environment for sexual harassment of undocumented women workers? In her article exploring sexual harassment in agricultural labor, Maria M. Dominguez cites "language, culture, education, immigration status, and fear of economic repercussions" as the most prominent reasons for undocumented women's unwillingness to come forward with such claims.<sup>69</sup>

---

/compliance/whd/whdfs48.htm (last visited July 13, 2004); OFFICE OF LEGAL COUNSEL, U.S. EEOC, DIRECTIVES TRANSMITTAL NO. 915.002, RESCISSION OF ENFORCEMENT GUIDANCE ON REMEDIES AVAILABLE TO UNDOCUMENTED WORKERS UNDER FEDERAL EMPLOYMENT DISCRIMINATION LAWS (2002), available at <http://www.eeoc.gov/policy/docs/undoc-rescind.html> (last visited Aug. 15, 2004).

65. 210 F.R.D. 237 (2002) (in which plaintiffs filed a complaint against employers alleging violations of Title VII, Fair Labor Standards Act ("FLSA") and the Illinois Minimum Wages Law. Following *Hoffman*, defendants filed a motion to compel document production related to plaintiffs' immigration status and work authorization, which the court denied).

66. *Id.*

67. *Id.*

68. *Id.*

69. Dominguez, *supra* note 1, at 255.

The reality of cultural isolation of Midwestern immigrant communities, and the industry's targeting of female workers,<sup>70</sup> suggest that these reasons are also arguably valid within the meatpacking industry, as well. Immigrant women workers are often unaware that sexual harassment complaint procedures exist. Many who are familiar with the law against sexual harassment do not realize they need witnesses to document the incident.<sup>71</sup>

In addition, many workers experience sexual violence during their emigration into the United States with *coyotes*, or hired guides.<sup>72</sup> Once they reach their new communities and obtain employment in the meatpacking industry, those workers become trapped within a cycle of re-victimization as they face continued sexual harassment and abuse within the plants.<sup>73</sup> Oftentimes these workers feel a sense of shame and are reluctant to come forward for fear of discovery, of exposing their undocumented family members, or out of a sense of responsibility for the harassment.<sup>74</sup> Combined with the language barrier and the lack of access to social services, these factors create a difficult environment, which must be overcome before workers are comfortable reporting sexual harassment.

Undocumented women also are reluctant to address sexual harassment because they hesitate to challenge male hierarchy in the industry, and they fear the subsequent economic and legal repercussions from their employers reporting them to immigration authorities. Although the EEOC views threats of deportation as retaliation,<sup>75</sup> and challenges them as a serious violation of the law, the threat alone may be sufficient in many cases to discourage undocumented workers from coming forward with complaints of discrimination and sexual harassment. The *Tortilleria* holding reaffirmed the EEOC's interpretation of Title VII as applicable to undocumented workers.<sup>76</sup> The *Hoffman* holding, however, casts doubt on the wisdom of coming forward with any discrimination complaints at all, since under *Hoffman* the NLRB can no longer enforce backpay awards by

---

70. GOUVEIA & STULL, *supra* note 40, at 3. "Packers admit to targeting women for recruitment. As a top executive of another major packing firm told Broadway . . . 'We couldn't . . . begin to staff our plants if we didn't have women. . . . I hope we can get them to stay longer because they probably aren't as mobile.'" *Id.*

71. Interview with Donna McDonald, *supra* note 18. Ms. McDonald related an incident at a packing plant represented by her local, during which management entered the women's locker room without knocking while two women were on break. *Id.* One woman was lying down on a bench, and the other was changing her shirt. *Id.* Management demanded to know why the women were "wasting their time," and both women were terminated the following day. *Id.* According to Ms. McDonald, this was "sexual harassment at its peak," and the union immediately directed both women to the Nebraska Employment Opportunity Commission. *Id.*

72. Interview with Holly Burns, *supra* note 5.

73. *Id.*

74. *Id.*

75. Ontiveros, *supra* note 1, at 180.

76. 758 F.Supp. 585 at 589.

employers,<sup>77</sup> and the complaint may result in endangering the undocumented worker without the possibility of any benefit or compensation.

#### B. SOLUTIONS FOR OVERCOMING BARRIERS IN THE PACKING PLANTS

Union representation can play an important role in the protection of undocumented workers suffering from sexual harassment. Many workers belong to unions, which have a responsibility to represent all their workers equally.<sup>78</sup> By forcing plant owners to comply with state statutory requirements to provide a community referral person to non-English speaking workers,<sup>79</sup> the United Food and Commercial Workers Union has facilitated a much needed resource for undocumented women facing sexual harassment. Unions may also be instrumental in pushing plant owners to provide relevant information to workers in their own language. For example, the Nebraska Meatpacking Industry Workers Bill of Rights includes the right to complete information,<sup>80</sup> presumably in a language the worker understands. Ideally, by working to increase access to information about workplace rights for non-English speaking workers, unions will strengthen the rights of all workers and contribute to a more supportive environment where undocumented women may report illegal sexual harassment without feeling stigmatized or facing the threat of deportation.

When no state legislation covers workplace discrimination,<sup>81</sup> workers can bring sexual harassment claims to the EEOC. A worker may file a claim under either a state Fair Employment Practice Agency or the EEOC but may not have concurrent cases.<sup>82</sup> The EEOC assists individuals in filing employment discrimination claims, including age, disability, national origin, pregnancy, race- and sex-based discrimination, as well as equal pay and sexual harassment claims.<sup>83</sup> However, this can be a time-consuming

---

77. 535 U.S. at 152.

78. *Id.*

79. IOWA CODE § 91E.2(2) (providing that “[i]f more than ten percent of an employer’s employees are non-English speaking and speak the same non-English language, the employer shall . . . [employ a person] . . . whose primary responsibility is to serve as a referral agent to community services”).

80. NEB. REV. STAT. § 48-2213(2)(d) (providing that the “duties of the [meatpacking industry worker rights] coordinator shall be to inspect and review the practices and procedures of meatpacking operations in . . . Nebraska as they relate to the provisions of the Governor’s Nebraska Meatpacking Industry Workers Bill of Rights,” including “the right to complete information” and “the right to understand the information provided”).

81. Dominguez, *supra* note 1, at 243 (explaining that sexual harassment and sex discrimination claims in California are brought to the Department of Fair Employment and Housing, created under the California Fair Employment and Housing Act. The Act prohibits discrimination on the basis of a variety of characteristics, including sex and national origin).

82. Telephone Interview with Maria Flores, Training and Outreach Program Manager, EEOC Milwaukee District Office (Feb. 23, 2004) (transcript on file with Hastings Women’s Law Journal).

83. U.S. EEOC, at <http://www.eeoc.gov/types/index.html> (last visited July 13, 2004).

process and may not be feasible for the majority of undocumented women workers due to the difficulty of following through with the complaint and investigation procedures.<sup>84</sup> Most importantly, in order to file a sexual harassment complaint with the EEOC, the worker must first know that sexual harassment is against the law.

If a worker is hesitant to file a complaint under her own name, the third party charge allows entities representing the interests of the constituent group — such as an advocacy group or a union — to file a complaint on the individual's behalf.<sup>85</sup> The intermediary process may be preferable to an undocumented worker who does not wish to expose her lack of immigration status to the federal government, or who fears involvement with the federal government as a result of political retaliation in her home country.<sup>86</sup> A well-publicized third party charge filed in 2001 on behalf of immigrant women alleging sexual harassment by DeCoster Farms resulted in a settlement of \$1.5 million and the filing of a consent decree in 2002.<sup>87</sup> In that case, the Iowa Coalition Against Domestic Violence filed the claim on behalf of the workers — some of whom were undocumented — and worked with the EEOC Milwaukee district office to resolve the claim.<sup>88</sup>

In order to file a charge, the worker must either mail the complaint or submit it in person at the nearest EEOC office within 180 days of the alleged violation.<sup>89</sup> If the offense is covered by state or local anti-discrimination law, that time period is extended to 300 days.<sup>90</sup> While this may seem relatively uncomplicated, limited language proficiency, cultural concerns, and geographical isolation all function to limit access to the process. For example, women who do not speak English or who lack access to education may be entirely unaware of their rights.<sup>91</sup> Even where the EEOC provides information in bilingual format, workers who are not literate in their own languages would be unable to utilize that information.<sup>92</sup>

Worker education may be the greatest challenge of all for the EEOC. To meet the challenge, the EEOC provides regional outreach program coordinators to train workers and employers on the law.<sup>93</sup> The EEOC also

---

84. Dominguez, *supra* note 1, at 243 (explaining that the EEOC avenue is difficult because the agency addresses “numerous and varied” employment discrimination claims, and because “federal resources are limited”).

85. Interview with Maria Flores, *supra* note 82.

86. *Id.*

87. U.S. EEOC, EEOC AND DECOSTER FARMS SETTLE COMPLAINT FOR \$1,525,000 (Sept. 30, 2002), at <http://www.eeoc.gov/press/9-30-02-b.html> (last visited July 13, 2004).

88. *Id.*

89. U.S. EEOC, FILING A CHARGE OF EMPLOYMENT DISCRIMINATION, at [http://www.eeoc.gov/charge/overview\\_charge\\_filing.html](http://www.eeoc.gov/charge/overview_charge_filing.html) (last visited July 13, 2004).

90. *Id.*

91. Dominguez, *supra* note 1, at 255-56.

92. Interview with Maria Flores, *supra* note 82.

93. U.S. EEOC, NO-COST OUTREACH PROGRAMS, at <http://www.eeoc.gov/outreach/nocost.html> (last visited July 13, 2004).

addresses sexual harassment and other discrimination topics when responding to invitations for trainings, and by initiating trainings where outreach specialists determine that education is needed.<sup>94</sup> Cultural differences may also be a limiting factor because women may not be aware that they have a right to protect themselves against such discrimination or may think that such behavior is normal in a different cultural environment.<sup>95</sup>

In addition to these individualized barriers to the complaint process, the law itself may not address the root of the problem. In an examination of individual statutory lawsuits by female farm workers, University of San Francisco School of Law Professor Maria Ontiveros notes that Title VII — though applicable to undocumented workers — is ultimately ineffective at resolving the problem of sexual harassment of such workers because it fails to address the fundamental basis for the discrimination: the combination of sex, national origin, *and* immigration status.<sup>96</sup> The American judicial system's "difficulty in understanding the cultural differences associated with discrimination and harassment of immigrant women" has "resulted in erroneous conclusions about the credibility of female complainants."<sup>97</sup> Once sexual harassment complaints become lawsuits, the legal system's perception of women of color negatively affects the cases because "judges and juries tend to disbelieve what they say," and because "the dominant culture's construct of their sexuality influences the cases' outcomes."<sup>98</sup>

The 1991 amendments to the Civil Rights Act of 1964 strengthened the remedies for sexual harassment, allowing recovery for compensatory damages beyond back pay, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and punitive damages, if the plaintiff can demonstrate that the employer acted with malice or reckless indifference.<sup>99</sup> The extent to which the recent *Hoffman* holding affects the availability of these remedies to undocumented women remains unclear. An attorney who wishes to represent an undocumented worker in a sexual harassment claim may be unwilling to expose her client to discovery that will reveal her legal status and re-

---

94. Interview with Maria Flores, *supra* note 82.

95. Dominguez, *supra* note 1, at 256-57 (explaining that as community advocates interviewed farmworker women in California, "the stories [they] heard . . . all reflected this belief that the job of women is to obey the men — the men at home, the crew leaders in the field, all the men are to be obeyed, no matter what.").

96. Ontiveros, *supra* note 1, at 178 (exploring the life experiences of immigrant farmworker women in California).

97. *Id.* at 179.

98. Maria L. Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, 23 GOLDEN GATE U. L. REV. 817, 824 (1993) (discussing the inseparability of race from sex in the sexual harassment experiences of women of color).

99. EQUAL RIGHTS ADVOCATES, SEXUAL HARASSMENT IN THE WORKPLACE, at <http://www.equalrights.org/professional/sexhar/work/workplac.asp> (last visited July 13, 2004).

victimize her by subjecting her to the possibility of deportation.

### C. OUTREACH EFFORTS IN MEATPACKING COMMUNITIES

Advocates and outreach workers in California have successfully implemented a variety of strategies in the farm worker community that may be effectively transferred to employees in Midwestern meatpacking communities. Ontiveros argues that community-based organizing around the notion of transnational identity has worked to empower farm workers, which in turn strengthens their communities and allows them to better utilize social services and advocate for change.<sup>100</sup> Farmworker women have organized themselves into groups such as the Farmworker Women's Leadership Network, or *Lideres Campesinas*, which focused initially on domestic violence and then later expanded into health issues.<sup>101</sup> In addition, *Lideres Campesinas* uses a peer education model to educate farmworker women about AIDS, pesticides, workplace rights, and health and safety issues.<sup>102</sup> This model is effective because it utilizes the women's common experience and knowledge to deal effectively with the realities of their work and communities.<sup>103</sup>

Legal advocates, union organizers, and individual workers can play an invaluable role in new meatpacking communities by working locally with city councils and state agencies to educate them about the cultural realities of the relevant community. Ontiveros, for example, cites the *Alfara* case, in which the EEOC and two community organizations worked together in mutual training sessions.<sup>104</sup> The EEOC educated the community groups on sexual harassment law and the community groups worked to educate the EEOC about the agricultural industry and its major players.<sup>105</sup>

*Alfara* provides an interesting model for growing immigrant communities in the Midwest. As the meatpacking industry continues to target the immigrant workforce and draw new ethnic groups to the Midwest in search of jobs, the need for local groups to work together with the relevant immigrant community to educate the EEOC about how it can best advocate for those workers will increase. The EEOC's proactive and collaborative efforts to identify communities in need of training have had a ripple effect that continuously expands the circle of advocacy and

---

100. Ontiveros, *supra* note 1, at 181.

101. *Id.* at 182.

102. *Id.*

103. *Id.*

104. *Id.* at 180. See also Tamayo, *supra* note 1, at 1080-81 (discussing the case of farmworker Blanca Alfaro, who was fired by her employer, lettuce producer Tanimura & Antle, after complaining of sexual harassment. Tamayo explains that the company settled after the Supreme Court ruled in *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998), that an employer can be held vicariously liable for sexual harassment by a supervisor if it results in a tangible employment action).

105. Ontiveros, *supra* note 1, at 180.



community organizations that can impact workers' rights.<sup>106</sup> In light of the Court's increasingly restrictive interpretations of the relationships between immigration and labor law and policy, the ties among new immigrant workers, Midwestern communities, and relevant grassroots and state agencies will become more and more important. The ability of state agencies to increase their cultural competency and adapt to the changing nature of Midwestern communities will also continue to play an important role in building worker awareness of employment rights. For example, the EEOC Milwaukee district office<sup>107</sup> outreach division will hold worker trainings in schools, churches, individual homes, or during weekends. Essentially, they will hold trainings whenever or wherever it must in order to build trust in communities and increase workers' access to the complaint process.<sup>108</sup>

Likewise, the Denver district office has collaborated with the Milwaukee office to spearhead outreach and education efforts for immigrant workers throughout the Midwest.<sup>109</sup> By working with agencies like the Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices,<sup>110</sup> creating task forces in different packing communities designed to identify and address discrimination problems, and hosting workers' rights seminars in Spanish, the Midwestern district offices have provided a variety of avenues for immigrant workers to learn about their rights and come forward with complaints.<sup>111</sup>

Local advocacy organizations play a crucial role in the lives of individual workers. The Lincoln Hispanic Community Center in Lincoln, Nebraska, conducts a civil legal clinic which provides free services to low-income individuals and refers sexual harassment and discrimination complaints to the Nebraska EEOC and the Lincoln Human Rights

---

106. Interview with Maria Flores, *supra* note 82 (explaining that training opportunities arise from a variety of circumstances, including requests from advocacy and community organizations, agency efforts to target geographically isolated areas, and ripple effects from word-of-mouth in immigrant communities).

107. The EEOC's Milwaukee district office covers Iowa. U.S. EEOC, MILWAUKEE DISTRICT OFFICE, at <http://www.eeoc.gov/milwaukee/area.html> (last visited July 12, 2004).

108. Interview with Maria Flores, *supra* note 82.

109. Telephone Interview with Patricia McMahon, Training and Outreach Program Analyst, EEOC Denver District Office (Feb. 23, 2004) (transcript on file with Hastings Women's Law Journal). Ms. McMahon described the Denver and Milwaukee offices' collaborative efforts in April 2003 to target meatpacking communities in South Sioux City, Nebraska, and Sioux City, Iowa. *Id.* EEOC outreach workers met with union officials, community leaders, and the Nebraska Mexican-American Commission to address working conditions for immigrant employees in packing plants. *Id.* In addition, the Denver office produced a video in Spanish for the Spanish-language community which tends to work in meatpacking plants. *Id.* The video was distributed widely to places such as state departments of labor, the Mexican consulates, and legal services. *Id.*

110. *See generally*, OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES, U.S. DEP'T OF JUSTICE, at <http://www.usdoj.gov/crt/osc/> (last visited July 15, 2004).

111. Interview with Patricia McMahon, *supra* note 109.

Commission.<sup>112</sup> The Immigrant Rights Network of Iowa and Nebraska conducts a variety of programs focused on immigrants' substantive rights in the workplace and the community, including the Campaign for Workers' Rights, the Campaign for Positive Media Coverage of Immigrants and Their Issues, and the Campaign for Advancing a Pro-Immigrant Agenda in the Heartland.<sup>113</sup>

Rural Advocacy 2003 is a diverse coalition of religious, environmental, farm, health and citizen groups that has focused on creating dialogue and encouraging social and political action around rural and migrant farmworker issues in Iowa.<sup>114</sup> Rural Advocacy advocates for the adoption of a meatpacking industry workers' bill of rights like the Nebraska statute,<sup>115</sup> and supports the right of workers to be free from discrimination, sexual harassment and abuse in the workplace.<sup>116</sup> Rural Advocacy estimates that more than 30,000 individuals currently work in the food processing and meatpacking industries in Iowa, and recognizes that proactive legislation is crucial in order to protect the rights of those workers, prevent workplace injuries, and ensure compensation.<sup>117</sup>

The ability of local or statewide organizations to advocate for immigrant communities may be restricted by the economic impact of the packing plant on those very communities. For example, since its decision to locate in Lexington, Nebraska, Iowa Beef Packers has paid for a new community soccer field.<sup>118</sup> Within the context of growing corporate community sponsorship, the challenge of strengthening the worker's voice will become increasingly difficult.<sup>119</sup> Vulnerable immigrant workers who are being sexually harassed at the meatpacking plant may be less likely to find a receptive response to their complaints if people in the community view the plant as an important contributor to the community and fear the plant may abandon their town for a less troublesome location.<sup>120</sup> At that point, any effective dialogue that may otherwise be generated to address the problem will potentially be silenced by the corporate presence,<sup>121</sup> unless advocacy organizations, state agencies, and statutory officers like the Workers' Rights Coordinator remain committed to working with the community on a consistent basis to keep these issues in the foreground.

---

112. Interview with Holly Burns, *supra* note 5.

113. See generally, IMMIGRANT RIGHTS NETWORK OF IOWA AND NEBRASKA, at <http://www.irnin.org/ourcampaigns.htm> (last visited July 13, 2004).

114. RURAL ADVOCACY, *supra* note 13.

115. See NEB. REV. STAT. § 48-2213(2)(a)-(j).

116. RURAL ADVOCACY, *supra* note 13.

117. *Id.*

118. Interview with Holly Burns, *supra* note 5.

119. *Id.*

120. *Id.*

121. *Id.*

## V. CONCLUSION

In recognition of the growing presence of immigrant workers in Midwestern communities, Iowa and Nebraska have promulgated immigrant workers protection legislation. These laws increase the responsibilities of meatpacking plants not only to provide information to their workers about their legal rights, but also to increase workers' access to social services by employing an individual to serve as a referral to community services.<sup>122</sup> Although the implementation and enforcement of these laws is questionable, the efforts of groups such as the United Food and Commercial Workers Union to organize workers and inform them of their legal rights have induced some plants to comply with their legal obligations. In addition to creating statutory obligations, Iowa and Nebraska have created state agencies to advocate for the rights of Latino and immigrant residents.

A variety of factors related to working conditions in meatpacking plants continue to pose a challenge to labor activists and employment rights agencies. Sexual harassment of employees by supervisors or co-workers functions to exacerbate the dangers caused by close physical proximity, the handling of sharp knives and hooks, and line speeds set to maximize production.<sup>123</sup> Threats of deportation, reluctance to expose oneself and one's family members to media publicity in small, rural towns, and the belief that undocumented workers have no workplace rights, discourage victims from reporting sexual harassment.<sup>124</sup>

The Supreme Court's holding in *Hoffman Plastic Compounds, Inc. v. NLRB* further limited workplace rights by preventing the NLRB from awarding backpay remedies to undocumented workers on the ground that such awards undermine national immigration policy as set forth in the IRCA.<sup>125</sup> Although prior caselaw had held that backpay awards did not conflict with immigration policy because awards discouraged employers from seeking out and hiring undocumented workers, *Hoffman* limits both the discretion of the NLRB to award such remedies and the rights of workers, while seeming to give employers the green light to "violate the labor laws at least once with impunity."<sup>126</sup>

The potential effects of *Hoffman* are to (1) encourage retaliation against undocumented workers who attempt to report labor violations by firing them with impunity; (2) provide incentives for employers to falsely claim that undocumented workers have no protections at all, thus chilling workers' attempts at enforcement of those rights; and (3) undermine

---

122. See IOWA CODE § 91E.1; NEB. REV. STAT. § 48-2213(2).

123. Interview with Holly Burns, *supra* note 5.

124. *Id.*

125. *Hoffman*, 535 U.S. at 151.

126. *Id.* at 154 (Breyer, J., dissenting) (disagreeing with the majority's reasoning that awarding backpay to undocumented workers runs counter to national immigration policy).

immigration law by encouraging employers to hire undocumented workers.<sup>127</sup> The *Hoffman* holding is potentially most harmful to meatpacking workers, many of whom are undocumented, speak limited English, and live in isolated, rural communities with little or no union presence. These factors contribute to the risk that meatpacking employers are able to control their workers by giving them false information about their workplace rights, denying them access to such information altogether, and holding out the threat of deportation should workers attempt to organize themselves or enforce their rights.

The application of *Hoffman* to Title VII claims remains unclear. To date, courts have not applied the limitations established by the *Hoffman* court on the NLRB to interpretations of Title VII rights and their application to undocumented workers. In *EEOC v. Tortillería "La Mejor,"* the district court reasoned that maintaining federal employment rights for undocumented workers is consistent with the objectives of immigration law because it discourages employers from hiring undocumented workers.<sup>128</sup> In the post-*Hoffman* case of *De La Rosa v. N. Harvest Furniture*, the Illinois district court refused to apply the *Hoffman* holding to the context of Title VII claims.<sup>129</sup> From *De La Rosa*, it appears as though courts will construe *Hoffman* as narrowly as possible, so as to avoid undermining congressional intent on immigration. A broader reading of *Hoffman* might encourage employers to seek out and hire undocumented workers.

Despite the apparent unwillingness of courts to apply *Hoffman* to discrimination cases, undocumented workers continue to suffer harassment in meatpacking plants. A variety of reasons contribute to the persistence of this problem. Workers are often unaware they have a right to challenge such harassment, they may lack education or access to social and legal services, and likely fear retaliatory actions by employers.<sup>130</sup> Even where victims are aware of their workplace rights, often feelings of shame and responsibility for the harassment, cultural and language barriers, and hesitancy to expose one's family to media attention effectively prevent women from coming forward with claims.<sup>131</sup>

The EEOC partners with a range of state agencies, statewide and local advocacy groups, and social service agencies to provide education and outreach about workplace rights, including sexual harassment and discrimination. The Milwaukee and Denver district offices cover Iowa and Nebraska, and have continued to build their relationships within meatpacking communities by working with a variety of groups to create dialogue about immigrant workers' rights. Where workers are hesitant to

---

127. NATIONAL EMPLOYMENT LAW PROJECT, *supra* note 48.

128. 758 F. Supp. at 591.

129. 210 F.R.D. 237.

130. Interview with Holly Burns, *supra* note 5.

131. *Id.*

file claims with the EEOC for fear of retaliation, organizations can file a third party charge on their behalf.<sup>132</sup> The problem with the EEOC process, however, lies in the inherent difficulties in filing and pursuing a discrimination or harassment claim, which often functions as a barrier to the process.<sup>133</sup>

A multitude of statewide and local organizations works consistently to provide education, outreach, and support to immigrant communities in the Midwest. The Lincoln Hispanic Community Center, the Immigrant Rights Network of Iowa and Nebraska, Nebraska Appleseed, and Rural Advocacy are a handful of organizations that have developed innovative programs and provided direct services to immigrant workers in meatpacking communities and throughout Iowa and Nebraska. Peer education programs, such as those implemented by *Lideres Campesinas* in California farmworker communities, may also be of tremendous value in educating new immigrant communities in the Midwest about employment and civil rights, including the right to resist and report sexual harassment in the workplace.

By continuing to collaborate in outreach and education of meatpacking workers, the efforts of federal and state agencies along with local advocacy groups to implement protective state legislation regarding protection from sexual harassment, will build the capacity of workers to enforce their own workplace rights. As workers gain a more powerful voice in the workplace, their voice in the community will strengthen and contribute to increased opportunities for future generations.

---

132. Interview with Patricia McMahon, *supra* note 109.

133. Ontiveros, *supra* note 1.